

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	CRIMINAL ACTION NO.
VS.)	
)	3:04-CR-0278(01)-G
RICKY WAYNE TOLBERT, JR.,)	
)	
Defendant.)	

**ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

The United States Magistrate Judge made findings, conclusions, and a recommendation in this case. *See* docket entry 57. No objections were filed. The district court reviewed the proposed findings, conclusions and recommendation for plain error. Finding none, the court **ACCEPTS** the Findings, Conclusions and Recommendation of the United States Magistrate Judge.

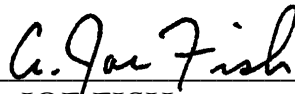
It is therefore **ORDERED** that the defendant's motion to appoint counsel (docket entry 46) is **CONSTRUED** as a successive Section 2255 motion, and that it is **TRANSFERRED** to the United States Court of Appeals for the Fifth Circuit to seek authorization to file a successive Section 2255 motion. *See* 28 U.S.C. § 2255(h);

28 U.S.C. § 2244(b)(3); 28 U.S.C. § 1631.*

The Clerk of the Court is **DIRECTED** to (1) terminate the motion to appoint counsel in the criminal case (docket entry 46), (2) open a new Section 2255 action for statistical purposes based on the motion to appoint counsel (nature of suit code 510, with direct assignment per Special Order 3-250 to Senior United States District Judge A. Joe Fish and United States Magistrate Judge Renée Harris Toliver), and (3) effect the transfer in the newly opened case.

SO ORDERED.

December 9, 2020.



A. JOE FISH
Senior United States District Judge

* An order transferring a successive application to the court of appeals is not a final order requiring a certificate of appealability. See *United States v. Fulton*, 780 F.3d 683, 688 (5th Cir.), *cert. denied*, 577 U.S. 967 (2015); *Brewer v. Stephens*, 605 Fed. Appx. 417 (5th Cir.) (per curiam), *cert. dismissed*, 577 U.S. 983 (2015).